

Farm Service Agency, USDA

§ 795.5

GENERAL

§ 795.1 [Reserved]

§ 795.2 Applicability.

(a) The provisions of this part are applicable to payments when so provided by the individual program regulations under which the payments are made. The amount of the limitation shall be as specified in the individual program regulations.

(b) The limitation shall be applied to the payments for a commodity for a crop year.

(c) The limitation shall not be applicable to payments made to States, political subdivisions, or agencies thereof for participation in the programs on lands owned by such States, political subdivisions, or agencies thereof so long as such lands are farmed primarily in the direct furtherance of a public function. However, the limitation is applicable to persons who rent or lease land owned by States, political subdivisions, or agencies thereof.

(d) The limitation shall not be applicable to payments made to Indian tribal ventures participating in the programs where a responsible official of the Bureau of Indian Affairs or the Indian Tribal Council certifies that no more than the program payment limitation shall accrue directly or indirectly to any individual Indian and the State committee reviews and approves the exemption.

(e) Except as provided in part 1497 of this title, this part shall not be applicable to contracts entered into on or after August 1, 1988 in accordance with part 704 of this chapter.

[49 FR 14719, Apr. 13, 1984, as amended at 51 FR 8453, Mar. 11, 1986; 51 FR 36905, Oct. 16, 1986; 53 FR 29570, Aug. 5, 1988]

§ 795.3 Definitions.

(a) The terms defined in part 719 of this chapter, governing reconstitutions of farms, shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b)(1) Subject to the provisions of this part, the term "person" shall mean an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order

to be considered to be a separate person for the purposes of this part with respect to any crop, in addition to any other provision of this part, an individual or other legal entity must:

(i) Have a separate and distinct interest in the crop or the land on which the crop is produced;

(ii) Exercise separate responsibility for such interest; and

(iii) Be responsible for payment of the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

(2) The term "person" shall not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.

(c) The term "family member" shall mean the individual, the great-grandparent, grandparent, child, grandchild, and great-grandchild of such individual and the spouses of all such individuals.

(d) The term "separate unit" shall mean an individual who, prior to December 31, 1985: (1) Had been engaged in a separate farming operation and (2) in accordance with the provisions of this part, had been determined to be a separate person or could have so determined under the circumstances existing at such time.

[52 FR 26295, July 14, 1987]

§ 795.4 Family members.

Effective for the 1987 through 1990 crops, an individual shall not be denied a determination that such individual was a "person" solely on the basis that:

(a) A family member cosigns for, or makes a loan to, such individual and leases, loans or gives equipment, land or labor to such an individual; and

(b) Such family members were organized as separate units prior to December 31, 1985.

[52 FR 26295, July 14, 1987]

§ 795.5 Timing for determining status of persons.

Except as otherwise set forth in this part, the status of individuals or entities as of March 1, or such other date as may be determined and announced by the Administrator shall be the basis

§ 795.6

on which determinations are made in accordance with this part for the year for which the determination is made.

[51 FR 21836, June 16, 1986; 51 FR 36905, Oct. 16, 1986]

§ 795.6 Multiple individuals or other entities.

The rules in §§ 795.5 through 795.16 shall be used to determine whether certain multiple individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the limitation. In cases in which more than one rule would appear to be applicable, the rule which is most restrictive on the number of persons shall apply.

§ 795.7 Entities or joint operations not considered as a person.

A partnership, joint venture, tenants-in-common, or joint tenants shall not be considered as a person but, notwithstanding the provisions of § 795.3, each individual or other legal entity who shares in the proceeds derived from farming by such joint operations shall be considered a separate person, except as otherwise provided in this part, and shall be listed as a producer for payment purposes on program documents. The payment shares listed on the program documents for each individual or other legal entity shall be the same as each individual or other legal entity shares in the proceeds derived from farming by such joint operation. Notwithstanding the foregoing, each individual or other legal entity who shares in the proceeds derived from farming by such joint operation shall not be considered as a separate person unless the individual or other legal entity is actively engaged in the farming operations of the partnership or other joint operation. An individual or other legal entity shall be considered as actively engaged in the farming operation only if its contribution to the joint operation is commensurate with its share in the proceeds derived from farming by such joint operation. Members of the partnership or joint venture must furnish satisfactory evidence that their contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with their claimed shares of the proceeds. A

7 CFR Ch. VII (1–1–13 Edition)

capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual. If the contribution consists substantially of capital, such capital must have been contributed directly to the joint operation by the individual or other legal entity and not acquired as a result of (a) a loan made to the joint operation, (b) a loan which was made to such individual or other legal entity by the joint operation or any of its members or related entities, or (c) a loan made to such individual or other legal entity which was guaranteed by the joint operation or any of its members or related entities.

§ 795.8 Corporations and stockholders.

(a) A corporation (including a limited partnership) shall be considered as one person, and an individual stockholder of the corporation may be considered as a separate person to the extent that such stockholder is engaged in the production of the crop as a separate producer and otherwise meets the requirements of § 795.3, except that a corporation in which more than 50 percent of the stock is owned by an individual (including the stock owned by the individual's spouse, minor children, and trusts for the benefit of such minor children), or by a legal entity, shall not be considered as a separate person from such individual or legal entity.

(b) Where the same two or more individuals or other legal entities own more than 50 percent of the stock in each of two or more corporations, all such corporations shall be considered as one person.

(c) The percentage share of the value of the stock owned by an individual or other legal entity shall be determined as of March 1 of the crop year, except that where a stockholder voluntarily acquires stock after March 1 and before the harvest of the crop, the amount of any stock so acquired shall be included in determining the percentage share of the value of the stock owned by the stockholder. Where there is only one class of stock, a stockholder's percentage share of the value of the outstanding stock shall be equal to the percentage of the outstanding stock owned by the stockholder. If the corporation has more than one class of